



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

File: [REDACTED] Office: Nebraska Service Center

Date: DEC 5 2000

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

Petition: Petition for Alien Fiance(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(K)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

Identifying data removed to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

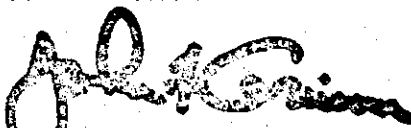
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Mary C. Mulrean, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a once-married native of Libya and a naturalized citizen of the United States. The beneficiary is a once-married native and citizen of Libya. The director determined that the petitioner had not established that the beneficiary is legally free to marry. The petitioner submitted evidence of the legal termination of his prior marriage. However, he has not provided documentation from the civil authorities in Italy that the beneficiary's previous marriage ended when her husband died. The petition was filed on September 20, 1999.

On appeal, the petitioner states "I have started the necessary procedures to secure official evidence of death from Italy, where Yussef Salih Kherbish was assassinated on June 26, 1987 not 1986 and/or from Egypt, where he was buried on July 12, 1987." She indicates that she does not know how long it will take to receive the evidence from either Italy or Egypt.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K), defines "fiancee" as:

An alien who is the fiancee or fiance of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after entry....

The Petition for Alien Fiance(e) (Form I-129F) was filed with the Service on September 20, 1999. The issue in this proceeding is whether the beneficiary is legally free to marry.

On November 24, 1999, the petitioner was requested to submit a copy of the death certificate registered with the proper civil authorities in her husband's name. She submits an unidentifiable photograph which was reported to be that of her husband after he was assassinated in Rome 1986. Secondary evidence of the death of the beneficiary's husband is not sufficient documentation to approve the petition.

The record contains a letter dated November 30, 1999 signed by [REDACTED]

[REDACTED] certifying that the late [REDACTED] was a member of [REDACTED] up to the time of his assassination in Rome, Italy on June 26, 1986 by the Libya dictator's overseas killing squads. This letter does not constitute primary evidence of the death of the beneficiary's husband.

Since the evidence submitted does not establish that the beneficiary's prior marriage terminated prior to the petition's filing date, the petition cannot be approved. Further, there is no statute or regulation which allows this case to remain open until such evidence is received.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.